IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.13910 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE KUNDAN SINGH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUNVANTBHAI JAMNADAS MANDALIA

Versus

STATE OF GUJARAT'

Appearance:

1. Special Civil Application No. 13910 of 1993

MR HARESH J TRIVEDI for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1

MR ND NANAVATI for Respondent Nos.2-3

NOTICE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE KUNDAN SINGH

Date of decision: 20/11/2003

ORAL JUDGEMENT

1. This petition has been filed for quashing and setting aside the order dated 08-12-1993 of the Joint Charity Commissioner, Ahmedabad passed in Judicial Misc. Application No.43 of 1993, for the directions to

respondent Nos.2 and 3 to declare the petitioner as elected as President of the respondent No.2 - Trust and to restrain respondent No.3 to handover charge of the President to respondent No.4 pending hearing and final disposal of the petition.

2. It is the case of the petitioner that he is a member of Respondent No.2 Trust. Respondent No.3 is at present the President of the Trust, and is managing the affairs of the Trust. Respondent No.4 is about to takeover charge as a President of the Trust. Respondent No.4 was nominated for the post of President of Trust. As per the constitution of the Trust, a member cannot contest the election as an office-bearer, if any amount is due from the member. An amount of Rs.662/= was found due from respondent No.4. As per the bye-law No.10 of the Maha Mandal, nomination form of member for the election as an office-bearer cannot be accepted, if the member is in due of the mandal (Trust). The petitioner wrote a letter dated 15-07-1993 to the Election Officer pointing out all the facts in detail and requested to reject/cancel name of respondent No.4 for the post of the President. However, the election took place in collusion with respondent Nos.3 and 4. The petitioner filed application No.43 of 1993 before the Joint Charity Commissioner praying for restraining respondent No.4 from acting as a President of Mandal and to take appropriate action against him under Section 66 of the Bombay Public Trusts Act, 1950 ('the Act' for short) for breach of provisions of Section 22 of the Act.

3. The Joint Charity Commissioner held that, even if any amount is due from respondent No.4, it was found due on 31-03-1993, and not on the date of filing of nomination form i.e. on 15-03-1993. The Joint Charity Commissioner rejected the application of the petitioner by his judgement and order dated 08-12-1993.

4. The petitioner states that the Election Officer has not followed the bye-laws of the Mandal and acted as mala fide in collusion with respondent No.4 and against the interest of general welfare and management of the Trust. The Charity Commissioner has also committed error in coming to the conclusion that respondent No.4 will takeover charge of the President within 90 days after December, after change entry is entered in the record of the Charity Commissioner. The Charity Commissioner was empowered under law to exercise powers, jurisdiction and discretion vested in him at law, but he has failed to perform statutory duties entrusted in law. It was necessary to direct respondent No.1 to hold election of the Trust and restrain respondent No.3 to handover charge

of President to respondent No.4. The Election Officer has acted in collusion with respondent Nos.3 and 4.

5. An affidavit-in-reply has been filed on behalf of respondent No.3 stating therein that there is no error apparent on the face of the record in the order passed by the Charity Commissioner and he has jurisdiction to pass appropriate order. Alternative remedy available by way of raising dispute under Section 22 of the Act. Hence, the petition is not maintainable. The Charity Commissioner has no power or authority under Section 41-A to entertain election dispute or decide the same. A Division Bench of this Court in case of Syedna Mohamed Burhanuddin the 52nd Dai-ul-Multaq and Head of the Dawoodi Bohra Community Vs. Charity Commissioner, Gujarat State, Ahmedabad and Ors., reported in 1992(1) G.L.H. 331, held that the Charity Commissioner can exercise the powers and issue directions under Section 41-A only in respect of the matter falling within the purview of Sections 32 to 41 and not in any other matters. If anybody or any person wants to raise any dispute, he has to raise such dispute before the Assistant or Deputy Charity Commissioner and after receipt of any such dispute the Assistant or Dy. Charity Commissioner is required to hold inquiry under Section 22 of the Act. In the present case, the Charity Commissioner has rightly held that the application of the petitioner is not falling under Section 41-A and dispute can be raised only after occurrence of change under Section 22(1) and not prior to that. After withdrawal of certain candidates the election of the President was held and the respondent No.4 secured highest vote i.e. 47 out of 72. He was elected as the President of the respondent No.2 - Trust. On having elected as the President of the Trust, he cannot be restrained to functioning as such unless and until the election is set aside by the competent authority. It is stated in the affidavit that the Charity Commissioner is not an Election Tribunal or the election dispute cannot be decided by him under Section 41-A and hence, this petition is not maintainable. It is specifically denied that on the date of submissions of the nomination paper by respondent No.4 i.e. on 15-03-1993, there was no amount due and payable on respondent No.4 to respondent No.2 Trust. No objection was raised at the time when the nomination paper was accepted. Thereafter the Election was held on 23-05-1993 and even at the time of Election no objection was taken. The petitioner had filed application being Misc. Judicial Application No.43 of 1993 before the Charity Commissioner under Section 41-A. A reply was also filed by the concerned authority. No interim relief

was granted during the pendency of that application. The allegations made in para 2.1, 2.2 and 2.3 were denied and material facts have not been disclosed. The Charity Commissioner passed the order on 08-12-1993 after affording full opportunity to the petitioner and other parties. The allegations regarding the mala fide or collusion with respondent No.4 were also denied. As per Rule 7 of the Constitution the Parishad is to be held for a period of five years and six months prior to holding of the Parishad the outgoing members of the Maha Samiti elects the President of the Trust, and for this purpose, meeting of outgoing Mahasamiti was held at Jamnagar on 22-05-1993. Vide Resolution No.5 the Parishad was required to have held meeting on 18th and 19th December 1993. The election was held on the next date i.e. on 23-05-1993. Respondent No.4 is legally and validly elected President of the Trust. As the Respondent No.1 has rejected the application under Section 41-A who is the custodian of all the public trusts registered under the Act and, therefore, this petition deserves to be dismissed.

6. I have gone through the papers on record. Nobody appears on behalf of the petitioner to press this petition. Moreover, the learned A.G.P places a copy of letter dated 15-01-1998 of Shri Bharat R. Pandya, advocate for the petitioner, stating that the matter has become infructuous on the basis of instructions from the petitioner and he does not wish to proceed further in the matter and requested for withdrawal of the petition. The said letter is placed on record. From the assertion made in the petition, no legality has been committed by the Charity Commissioner in passing the order. Moreover, the petition appears to have become infructuous by lapse of time. Accordingly this petition is dismissed. Rule discharged.

Sd/-

[KUNDAN SINGH, J]

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'Bhavesh'